IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:-

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

THURSDAY, THE 1ST MARCH 2007 / 10TH PHALGUNA 1928

M.F.A.No.1160 of 1994(E)

O.P.(M.V).NO.1109/1990 OF MOTOR ACCIDENTS CLAIMS TRIBUNAL, PALAKKAD.

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APPELLANT/PETITIONER:-

RAVEENDRAN SON OF VELAYUDHAN,
MUCHIKKAL HOUSE, VALLIKKODE AMSOM, PALGHAT.

BY ADV. SRI.T.C.MOHANDAS
SMT.M.PREETHA
SRI.T.M.SUNIL
SMT.S.CHITHRA

RESPONDENTS/RESPONDENTS:-

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1. M.SASINDRAN, SON OF NARAYANAN, 12/106, KARIYANKANDATH HOUSE, KUNNATHURMEDU, PALGHAT.

2. ANANDAN, SON OF PAZHANIYAPPAN, NAVANIKKODE HOUSE, PUTHUR POST, PALGHAT.

3. THE ORIENTAL INSURANCE CO.LTD., PALGHAT.

4. N.KUNJALI HAJI, SON OF ALI, NACHIKANDAM HOUSE, KUTTILANGADI, MALAPPURAM DIST.

5. T.HYDRU, SON OF MUHAMMED, THATTANTHODI HOUSE, KUTTILANGADI, MALAPPURAM DISTRICT.

* ADDITIONAL 6TH RESPONDENT IMPLEADED:

ADDL.6. UNITED INDIA INSURANCE CO. LTD., UPHILL, MALAPPURAM DISTRICT.

* (ADDITIONAL 6TH RESPONDENT IS IMPLEADED AS PER ORDER DATED 22.1.2007 ON I.A.NO.1930 OF 2006)

R3 BY ADV. SRI.M.JACOB MURICKAN
R6 BY ADV. SMT.P.A.REZIYA.

THIS MISCELLANEOUS FIRST APPEAL HAVING BEEN FINALLY HEARD ON 01/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:-

K.Padmanabhan Nair,J.

M.F.A.No.1160 of 1994-E

Dated, this the 1st day of March, 2007

JUDGMENT

The 2nd respondent was the driver of the stage carriage bus in which the appellant was travelling at the time of accident. The insurer had no contention that the driver was not holding a valid driving licence. The vehicle was covered with a valid policy of insurance also. Hence 2nd respondent is removed from the party array and the Miscellaneous First Appeal itself is heard and disposed of.

2. The appellant was a minor. He sustained injuries in a road traffic accident which took place on 26.5.1990. He filed a petition through his guardian and next friend claiming an amount of Rs.35,000/- as compensation. The Tribunal, after trial, awarded a compensation of Rs.2,950/- to the appellant. Challenging insufficiency of the quantum of compensation, the applicant has filed this appeal.

3. The brief facts that may be necessary for the disposal of the appeal are as follows: The petitioner, who was a

student, was travelling in a stage carriage bus bearing registration No.KLG 9115 on 26.5.1990. When the bus reached Pudupariyaram, it hit against another stage carriage bus bearing registration No.KEF 6570 and the appellant sustained injuries. According to the appellant, the accident occurred due to the negligence of the drivers of both the busines. The respondents filed written statements denying their liability. The Tribunal, after trial, found that the accident occurred due to the rash or negligent driving by the drivers of both the vehicles and apportioned the liability at 50:50. That finding has become final. I do not find any reason to interfere with that finding.

4. The evidence on record shows that the appellant was admitted in the hospital on 26.5.1990 and he was treated as an inpatient for 19 days and discharged on 14.6.1990. According to the petitioner, he sustained a fracture to nasal bone. But, he produced only a disability certificate from the doctor, which is proved and marked as Exhibit A5. The Tribunal called for the hospital records, which are marked as Exhibit X-1. It is true that there was no discussion as to the exact nature of the injuries sustained by the appellant. But, the fact remains is that he underwent treatment as inpatient for nineteen days. The Tribunal

has awarded only Rs.2,000/- for pain and suffering. Considering the fact and circumstances of the case, I am of the view that the Tribunal ought to have awarded an amount of Rs.5,000/- towards pain and suffering. The petitioner was awarded only an amount for Rs.750/- for treatment. I am of the view that the Tribunal ought to have awarded an amount of Rs.2,500/- on that count. For incidental expenses, instead of Rs.200/- I am awarding an amount of Rs.450/-. So, the total compensation payable to the petitioner is fixed at Rs.7,950/-. The Insurers had already deposited Rs.2,950/-. So, the balance Rs.5,000/- is also to be paid by the Insurers in equal proportions with interest at the rate of 7% per annum from the date of award.

In the result, the appeal is disposed of in the following manner: The appellant is awarded an additional compensation of Rs.5,000/- (Rupees five thousand only) with interest at the rate of 7% per annum from the date of award. The amount shall be paid by respondents 3 and 6 in equal proportions within two months from today.

K.Padmanabhan Nair
Judge

vku/-